

AGRICULTURAL LIENS

CHAPTER 887

H.B. No. 3063

AN ACT

relating to agricultural liens.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 70.401, Property Code, is amended by amending Subdivision (4) and adding Subdivisions (5), (6), (7), and (8) to read as follows:

(4) "Company-owned crop" means an agricultural crop:

(A) that is in the possession of a warehouse or contract purchaser located in this state and for which the agricultural producer has received full payment;

(B) that is not an open storage crop; or

(C) for which the warehouse or the contract purchaser tenders payment and the agricultural producer, without coercion, defers payment.

(5) "Contract purchaser" means a person who has agreed under a contract to purchase an agricultural crop or otherwise pay the agricultural producer for growing, producing, or harvesting the agricultural crop. The term *includes* ~~does not include~~ a person who, as to the transaction in question, is licensed and bonded under Chapter 14, Agriculture Code, or the United States Warehouse Act (7 U.S.C. Section 241 et seq.).

(6) "Open storage crop" means an agricultural crop that:

(A) an agricultural producer delivers or transfers to:

(i) a warehouse for storage; or

(ii) a contract purchaser located in this state;

(B) is not covered by a warehouse receipt; and

(C) is not owned by the lessee, owner, or operator of the warehouse in which the crop is stored or the contract purchaser to which the crop is delivered or transferred.

(7) "Secured lender" means a person that:

(A) has loaned money to a warehouse or a contract purchaser; and

(B) holds a perfected secured lien against a company-owned crop.

(8) "Warehouse" means a facility that stores or handles any agricultural crop after the crop is harvested, including a facility operated by a person who, as to the transaction in question, is licensed and bonded under Chapter 14, Agriculture Code, or the United States Warehouse Act (7 U.S.C. Section 241 et seq.). The term includes a person engaged in the business of operating a warehouse.

SECTION 2. Section 70.402, Property Code, is amended to read as follows:

Sec. 70.402. LIEN CREATED. (a) An agricultural producer who, under a contract with a contract purchaser, is to receive consideration for selling an agricultural crop grown, produced, or harvested by the producer has a lien *against that crop* for the amount owed under the contract, or for the *market* ~~reasonable~~ value of the crop on the date of transfer or delivery if there is no agreement concerning the amount owed under the contract.

(b) An agricultural producer who delivers or transfers an agricultural crop grown, produced, or harvested by the producer to a warehouse has a lien against that agricultural crop for the market value of the agricultural crop:

(1) on the date of delivery or transfer; or

(2) if there is to be a series of deliveries to the warehouse, on the date of the first delivery of the agricultural crop to the warehouse.

(c) A lien created under this subchapter is on every agricultural crop, either in raw or

processed form, that has been transferred or delivered by the agricultural producer and is in the possession of the *warehouse or the contract purchaser*, and if the *warehouse or the contract purchaser* sells all or part of the crop, on the proceeds of the sale. If an open storage ~~[the agricultural]~~ crop is commingled with a company-owned crop by a warehouse or a contract purchaser after the crop has been transferred or delivered, a lien created under this subchapter applies only to that portion of the *agricultural crop in the possession of the warehouse or the contract purchaser* ~~[purchaser's inventory]~~ in an amount that is equal to the amount of the crop transferred or delivered by the agricultural producer.

(d) ~~(e)~~ For purposes of this subchapter, an agricultural crop or processed form of an agricultural crop deposited by a contract purchaser with a warehouse, whether or not a warehouse receipt is given as security, is considered to be in the possession of the contract purchaser and subject to the lien *created by this subchapter*.

SECTION 3. Section 70.403, Property Code, is amended to read as follows:

Sec. 70.403. WHEN LIEN ATTACHES. A lien created under this subchapter attaches on the date on which physical possession of the agricultural crop is delivered or transferred by the agricultural producer to the *warehouse or to the contract purchaser or the purchaser's agent*, or if there is to be a series of deliveries ~~[to the contract purchaser or purchaser's agent]~~, on the date of the first delivery of the agricultural crop ~~[to the contract purchaser or purchaser's agent]~~.

SECTION 4. Section 70.404, Property Code, is amended to read as follows:

Sec. 70.404. APPLICABILITY OF OTHER LAW; EFFECT ON OTHER LAW. (a) Except as provided by Section 70.4045 of this code, Chapter 9, Business & Commerce Code, including applicable filing and perfection requirements, applies to a lien created under this subchapter.

(b) *Except as provided by Subsection (c), to the extent of a conflict, this subchapter controls over any other law.*

(c) *This subchapter does not abridge the protections afforded by any applicable law, including:*

- (1) *Chapter 14, Agriculture Code;*
- (2) *Chapter 7, Business & Commerce Code;*
- (3) *the United States Warehouse Act (7 U.S.C. Section 241 et seq.); or*
- (4) *common law, including the law of bailment.*

SECTION 5. Section 70.4045, Property Code, is amended to read as follows:

Sec. 70.4045. PERFECTION AND PRIORITY OF AGRICULTURAL LIEN ON CROPS. (a) Notwithstanding Chapter 9, Business & Commerce Code, a lien created under this subchapter is perfected at the time the lien attaches under Section 70.403 and continues to be perfected if a financing statement covering the agricultural crop is filed on or before the 90th day after the date:

(1) the physical possession of the crop is delivered or transferred by the agricultural producer to the *warehouse or the contract purchaser or the purchaser's agent*, if there is only one delivery ~~[under the contract]~~; or

(2) of the last delivery of the crop to the *warehouse or the contract purchaser or the purchaser's agent*, if there is a series of deliveries ~~[under the contract]~~.

(b) If a financing statement covering the agricultural crop is not filed within the time prescribed by Subsection (a)(1) or (2), as applicable, the lien is considered unperfected ~~[on the date the lien attached until the date the financing statement is filed or the lien is perfected under Chapter 9, Business & Commerce Code]~~.

(c) Notwithstanding Chapter 9, Business & Commerce Code, and except as provided by Subsection (d), a lien created and perfected under this subchapter has priority over a conflicting security interest in or lien on the agricultural crop or the proceeds from the sale of the crop created by the *warehouse or the contract purchaser* in favor of a third

party, ~~[other than a cotton ginner's lien created under Section 70.003(d),]~~ regardless of the date the security interest or lien created by the *warehouse or the contract purchaser* attached. This subsection does not affect:

(1) *the validity or priority of a security interest or lien:*

(A) *created and perfected to secure a loan directly to the agricultural producer; or*

(B) *created and perfected under Chapter 9, Business & Commerce Code, to secure a loan to a warehouse or a contract purchaser on a company-owned crop in favor of a secured lender;*

(2) *the validity or priority of a cotton ginner's lien created under Section 70.003(d);*
or

(3) *the rights of a holder of a negotiable warehouse receipt.*

(d) *Subsection (c) does not apply to a contract purchaser who purchases an agricultural crop from an agricultural producer under a marketing contract created under:*

(1) *Section 52.016, Agriculture Code; or*

(2) *regulations adopted by the United States Department of Agriculture under Title 7 of the United States Code.*

SECTION 6. Section 70.406(a), Property Code, is amended to read as follows:

(a) A buyer in ordinary course of business of an agricultural crop, including a person who buys any portion of an agricultural crop from a *warehouse or a contract purchaser*, whether or not the agricultural crop has been commingled, takes the agricultural crop free of a lien created under this subchapter, and the lien created by this subchapter does not pass to any subsequent claimant of the agricultural crop.

SECTION 7. Section 70.407(a), Property Code, is amended to read as follows:

(a) A lien created under this subchapter is discharged when:

(1) the lienholder receives full payment for the agricultural crop; or

(2) payment is tendered by the *warehouse or the contract purchaser, as applicable*, and the lienholder, without coercion, defers payment.

SECTION 8. Section 70.410, Property Code, is amended to read as follows:

Sec. 70.410. **WAIVER OF CERTAIN RIGHTS PROHIBITED.** An agricultural producer's agreement with a *warehouse or a contract purchaser* to waive the producer's right to seek a remedy provided by this subchapter is void.

SECTION 9. The changes in law made by this Act apply only to an agricultural producer who delivers or transfers an agricultural crop grown, produced, or harvested by the producer to a warehouse or a contract purchaser on or after the effective date of this Act. An agricultural producer who delivers or transfers an agricultural crop grown, produced, or harvested by the producer to a warehouse or a contract purchaser before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

SECTION 10. This Act takes effect September 1, 2017.

Passed by the House on May 3, 2017: Yeas 143, Nays 4, 1 present, not voting; passed by the Senate on May 19, 2017: Yeas 31, Nays 0.

Approved June 15, 2017.

Effective September 1, 2017.